THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.12527 OF 2003

ORDER:

This writ petition is filed seeking a Writ of *Certiorari* to call for the record relating to the proceedings of the 3rd respondent-Commissioner of Prohibition and Excise, dated 28.10.2000, and to quash the same being arbitrary and illegal.

The petitioner claims to be the owner of the tractor and trailer bearing No.KA-34-T-1130 & KA-34-1035. On March, 2000, the said vehicle was intercepted by the Excise Inspector, Kurnool, near Peddaharivanam Prohibition & Excise check post, and having found that 2000 arrack sachets in 5 plastic bags were being transported, the vehicle as well as the contraband material found therein, were seized under a panchanama. Samples were drawn for chemical analysis, and Crime No.70/2000 was registered on the file of the Prohibition & Excise Station, Adoni, under Section 7(a) read with Section 8(3) of the A.P. Prohibition Act, 1995. Thereafter, a show cause notice dated 30.3.2000, was issued to the petitioner, owner of the vehicle, to show cause as to why the tractor and trailer should not be confiscated, as it was being used for illegal transportation of contraband, violating the provisions of the A.P. Prohibition Act, 1995. The petitioner submitted his explanation denying the allegations made and stating that the confession said to have been made by the driver of the vehicle was not admissible in evidence. It was also stated that the petitioner had no knowledge about the transportation of the contraband and, as a matter of fact, the driver was instructed to use the vehicle for agricultural purpose only. It was also explained that on 9.3.2000, the petitioner had been to Bangalore on his personal work, and returned only on 12.3.2000. The 2nd respondent-Commissioner of Prohibition and Excise, having found that the explanation was not convincing, by order dated 6.5.2000, ordered confiscation of the vehicle in question under

Section 13(1) of the A.P. Prohibition Act, 1995, as amended by Act 15 of 1995. Aggrieved by the same, the petitioner preferred an appeal before the 3rd respondent, which was dismissed by order dated 28.10.2000. Hence, this writ petition.

I have heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition & Excise, appearing for the respondents.

The learned counsel for the petitioner contended that the order of confiscation passed by the 2nd respondent, as confirmed by the 3rd respondent, is arbitrary and illegal, since both the authorities have failed to take into consideration the specific plea of the petitioner, who is the owner of the vehicle, that he had no knowledge about the alleged offence. It is also contended that the criminal proceedings initiated against the petitioner vide C.C.No.43 of 2001, on the file of the Court of the Judicial First Class Magistrate, Adoni, ended in acquittal subsequently, by Judgment dated 26.11.2002 recording a finding that the petitioner was not guilty of the offence alleged and, therefore, the order of confiscation cannot be sustained, and liable to be set aside.

The learned Government Pleader vehemently contended that the order of acquittal in criminal proceedings has no bearing on the order of confiscation and, therefore, the impugned orders do not warrant any interference.

On a perusal of the material on record, it is clear that the fact that the vehicle in question was intercepted by the Excise Inspector, Adoni, and that the arrack being transported was seized from the vehicle is not in dispute. Though the petitioner, owner of the vehicle, pleaded that he had no knowledge about the alleged offence, the 2nd respondent disbelieved the said version and ordered confiscation of the vehicle in question. The finding recorded by the 2nd respondent was confirmed in appeal by the 3rd respondent. I do not find any justifiable reason to interfere with the said concurrent finding of fact

recorded by the respondents 2 and 3.

It is true that the petitioner was subsequently acquitted in the criminal proceeding by the learned Judicial First Class Magistrate, Adoni. However, a copy of the Judgment placed before this Court shows that the learned Magistrate having found that the prosecution failed to examine the panch witnesses, as well as the Deputy Commissioner of Excise, who alleged to have destroyed the contraband seized, and except M.Os.1 to 5 sample packets, no other documents were produced to substantiate the charge against the accused, held that the accused were entitled for benefit of doubt.

In the circumstances, the mere fact, that the petitioner was subsequently acquitted in the criminal proceeding, is not a relevant factor to set aside the order of confiscation ordered by competent authorities.

At any rate, it was made clear under Section 13-D of the A.P. Prohibition Act, 1995, that the order of confiscation under Section 13(2), shall not prevent the authority from initiating criminal proceedings against the accused and that the result of the criminal proceedings either acquittal or conviction or otherwise under the provisions of the Act will have no bearing on the order of confiscation passed under the Act.

For the aforesaid reason, I do not find any substance in the contentions of the petitioner and, therefore, the orders of confiscation do not warrant any interference.

The writ petition is accordingly dismissed. No costs.

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(G. ROHINI, J.)

July 24, 2006.
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.12527 OF 2003

July 24, 2006.

Between:

K. Ramalingappa. .. Petitioner.

And

The Prohibition and Excise Inspector,
Adoni and two others. .. Respondents.